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JUN 10 2004

In re Application of : **OFFICE OF PETITIONS**
Allgeier et al. :
Application No. 09/821,416 : **DECISION DISMISSING**
Filed: 29 March, 2001 : **PETITION**
Atty Docket No. 4-30652A/C1/30889 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on 21 January, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/220,813, filed on 23 December, 1998.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after 29 November, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;¹

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was

¹Any nonprovisional application or international application designated the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designated the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

Application No. 09/821,416

filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition is dismissed because copendency does not exist between the instant pending application, filed on 29 March, 2001, and the application for which the benefit under 35 U.S.C. § 120 is claimed. A review of Office PALM records indicates that the prior application became abandoned on 16 January, 2001, for failure to respond to the Office action requiring restriction mailed on 15 December, 1999, which set a 30 day shortened period for reply.

Petitioners may wish to consider filing a petition to revive the prior application for copendency with the present application.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, copendency must exist between the prior filed application and the application claiming benefit of the prior-filed application under 35 U.S.C. § 120.

As a one (1) month extension was required to make the reply filed on 21 January, 2004, a timely reply, a one (1) month time extension has been charged to counsel's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 2011 South Clark Place
 Customer Window
 Crystal Plaza 2, Lobby, Room 1B03
 Arlington, VA 22202

OR (for responses delivered on or after 5 June,
2004)


U.S. Patent and Trademark Office
220 20th Street S.

Application No. 09/821,416

Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

The application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.


Frances Hicks
Petitions Examiner
Office of Petitions